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PATENT

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : Purva R. Rajkotia  
Serial No. : 10/764,175  
Filed : January 23, 2004  
For : APPARATUS AND METHOD FOR IMPROVED CALL RELEASE IN A WIRELESS NETWORK  
Group No. : 2617  
Examiner : Marisol Figueroa

**MAIL STOP AF**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal. The review is requested for the reason(s) stated in the arguments below, demonstrating the clear legal and factual deficiency of the rejections of some or all claims.

Claims 1-3, 7-9 and 13-15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over what the Examiner characterizes as “Applicant’s Admitted Prior Art” (hereinafter “APA”) in view of

U.S. Patent No. 6,418,322 to *Kim, et al.*, (hereinafter "Kim"). The Applicant respectfully traverses the rejection. For the convenience of the Panel, claim 1 provides:

1. (Previously Presented) For use in a wireless network, a base station capable of releasing a call between said base station and a mobile station during a call set-up procedure, said base station comprising:
  - a preamble frame detector capable of detecting preamble frames transmitted to said base station by said mobile station during said call set-up procedure; and
  - a transmit power controller capable of adjusting a power level of null frames transmitted by said base station during said call set-up procedure.

Claim 1 requires a transmit power controller capable of adjusting a power level of null frames transmitted by said base station during said call set-up procedure. This is not disclosed or suggested by Kim. Kim does disclose:

A method of forward power control in a cellular mobile telecommunication system having a base station and a mobile station, a base station receives an information about the quality of a forward link from a mobile station and controls the transmission power in the forward link. If information about the quality of the forward link is not obtained within a predetermined period due to deterioration in the forward link, the base station changes its parameters of the forward power control. As a result, the digital gain of transmission power of the forward link is increased to improve the deteriorated quality of the forward link and to carry out the forward power control. Simultaneously, the base station decreases the digital gain of transmission power more rapidly to saving a power consumption and to reduce interference to other radio channels. *Abstract*

It is clear that while Kim does discuss power control on a forward channel, nothing in Kim discusses any capability to do so during the call set-up procedure, as claimed. It is clear that Kim's system requires that the call already be established before any power control takes place. This is

contrary to the claimed invention, where the power level of the null frames can be or is adjusted during the call set-up procedure. The Examiner appears to concede this in the Advisory Action, and also indicates that APA does not teach adjusting the power level of null frames (during call setup or any other time). No art of record teaches or suggests to one of skill in the art, having ordinary creativity and common sense, to adjust a power level of null frames transmitted by said base station during said call set-up procedure, or any base station or controller capable of doing so.

As this feature of claims 1, 7, 13, 19, and 25 is not taught or suggested by any art of record, alone or in combination, the obviousness rejection of all claims is legally deficient.

Claims 4, 5, 10, 11, 16 and 17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kim in view of U.S. Patent Application Publication No. 2002/0090947 to *Brooks, et al.*, (hereinafter “Brooks”). Applicant notes that the Examiner did not include any reference to APA in this statement of rejection, and the rejection is only over Kim and Brooks. The limitations of the respective parent claims are not shown to be present in Kim or Brooks, and so there is not a *prima facie* obviousness rejection. Applicant appreciates the Examiner’s explanation of the omission, but the Examiner will understand that appeal must be taken from the actual rejection, not any different rejection that the Examiner may have intended. The rejection of these claims is unquestionably legally deficient.

Neither Kim nor Brooks teaches or suggests the limitations discussed above with relation to adjusting power levels during the call set-up procedure. As none of the cited references, alone or in combination, teaches or suggests this feature, the rejection of these claims legally deficient.

Claims 6, 12, and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over APA

in view of Kim and Brooks, and further in view of U.S. Patent Application No. 2002/0068586 to *Chun, et al.*, (hereinafter “Chun”). Chun similarly does not teach or suggest the limitation discussed above with relation to adjusting power levels during the call set-up procedure. The rejection of these claims is legally and factually deficient.

Claims 19-21 and 25-27 were rejected as obvious over APA in view of U.S. Patent Application Publication No. 2004/0029604 to *Raaf*, (hereinafter “Raaf”). Claims 22, 23, 28 and 29 were rejected as obvious over APA in view of Raaf, and further in view of Brooks. Claims 24 and 30 were rejected as obvious over APA in views of Raaf and Brooks, and further in view of Chun.

Claims 19 and 25 each require that the power level of preamble frames transmitted by the mobile station is increased in response to the detection of at least one missing null frame from the base station. None of the cited references, alone or in combination, teaches or suggests this feature.

Raaf does teach in paragraph 0037 that power can be increased when there is “no reception of an acknowledgement message”, it does not teach or suggest that this can or should be done in response to the detection of eat least one missing null frame from the base station. Nothing in Raaf teaches or suggests that a null frame can or should be used as the described “acknowledgement message”. Further, Raaf teaches away from increasing power when at least one “acknowledgement message” is received.

The Examiner misapplies the decision in *In re Hutchison*, 154 F.2d 135 (CCPA 1946). In *Hutchinson*, the court did not consider the preamble phrase “adapted for use in the fabrication of a metal template or the like” to “constitute a limitation in any patentable sense.” In contrast, the “capable of” limitation in the present application imposes a capability requirement on the power

controller of claim 1 – i.e., the power controller must be able to adjust a power level of null frames transmitted by said base station during said call set-up procedure. The Examiner is invited to consider the non-precedential BPAI decision in *Ex parte Prall*, Appeal No. 2003-1556, which may be found at [www.uspto.gov/web/offices/dcom/bpai/decisions/fd031556.pdf](http://www.uspto.gov/web/offices/dcom/bpai/decisions/fd031556.pdf). While the limitation at issue in *Hutchinson* was in the preamble and merely recited an intended use, the limitation at issue in *Prall* imposed a capability requirement on the respective claim element – like that in the current application.

### CONCLUSION

As a result of the foregoing, the Applicant asserts that the claims in the Application are in condition for allowance over all art of record, and that the rejections are both factually and legally deficient, and respectfully requests this case be returned to the Examiner for allowance or, alternatively, further examination.

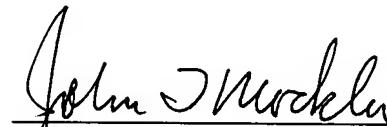
The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Munck Butrus Deposit Account No. 50-0208.

Respectfully submitted,

MUNCK BUTRUS, P.C.

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P.O. Drawer 800889  
Dallas, Texas 75380  
Phone: (972) 628-3600  
Fax: (972) 628-3616  
E-mail: [jmockler@munckbutrus.com](mailto:jmockler@munckbutrus.com)

  
John T. Mockler  
Registration No. 39,775